

AG Contract No.: KR04-1270TRN  
ADOT ECS File: JPA 04-060  
Project: HX15501C  
Section: SR 73 @ Whiteriver IHS  
TRACS No.: HX15501C  
Budget Source Item No.: 71205

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE ARIZONA DEPARTMENT OF TRANSPORTATION  
AND  
THE WHITE MOUNTAIN APACHE TRIBE

THIS AGREEMENT is entered into July 22, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the WHITE MOUNTAIN APACHE TRIBE, acting by and through its BOARD (the "Nation").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Nation is empowered by Council Resolution to enter into this Agreement, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Nation.

3. The State and the Nation desire to participate in the design, construction and maintenance of enhancing the lighting at the intersection of SR-73 and W. Hospital Entrance and N. Potter Street at an estimated cost of \$100,000.00, hereinafter referred to as the "Project", for the safety and benefit of the traveling public. The State and the Nation agree to each pay fifty-percent (50%) of the total estimated costs of the Project, currently estimated in the amount of \$100,000.00, except as stated in II.1.e. and II.2.c of this Agreement. The State's funding will be provided from the Traffic Signal funds, Item No. 71203. The parties hereto agree that the State shall be the lead agency for the Project.

4. The parties agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27635  
Filed with the Secretary of State  
Date Filed: 7/22/05  
Janice K. Brewer  
Secretary of State

By: [Signature]

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction of the Project. Incorporate or resolve the Nation's review comments.

b. Advertise for bids and award one or more construction contract(s) for the Project. Administer same, and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by delays attributable to the State.

c. Upon execution of this Agreement, invoice the Nation its proportionate share of total Project costs currently estimated at \$50,000.00, fifty-percent (50%) of the total estimated costs of the Project, as set forth in this Agreement.

d. Upon completion of the Project, approve and accept the intersection lighting as being complete, upon behalf of the parties hereto, and will provide maintenance of the intersection lighting *within* the State's right of way at the State's expense.

e. Upon completion of the construction of the Project, provide the Nation with an itemized list of the Project's final costs along with an invoice for reimbursement to the State by the Nation for its proportionate share of the monetary difference between the estimated cost paid by the Nation and the actual costs for the Project.

### **2. The Nation will:**

a. Review the design documents and provide comments.

b. Upon execution of this Agreement remit to the State \$50,000.00, fifty-percent (50%) of the total estimated costs, associated with the engineering, construction, and administration of the Project. Be responsible for contractor claims for additional compensation caused by delays attributable to the Nation.

c. Upon receipt of an itemized list of the Project's final costs and within thirty (30) days of an invoice, remit to the State its proportionate share of the monetary difference between the estimated cost paid by the Nation and the actual costs for the Project.

d. Upon completion and acceptance of the Project by the parties hereto, be responsible to provide electrical energy to connect and operate the Project's intersection lighting including the monthly utility cost associated with the operation of the Project's intersection lighting, all at Nation's expense.

## **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall become effective upon filing with the Secretary of State.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until the completion and reimbursements are provided for herein. This Agreement may be cancelled at any time prior to the award of a Project construction contract upon thirty (30) days written notice to either party. It is understood and agreed that, in the event the Nation terminates this Agreement, the State shall in no way be obligated to maintain said Project.

3. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the Nation for the vicarious liability of the State as a result of entering into this Agreement. Each party to this Agreement is responsible for its own negligence.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. Applicable laws of the State, Federal and Tribal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State, Federal and Tribal government, and acceptable to the State and the Tribe. Such process shall include a provision for arbitration, provided nothing contained in the Agreement should be deemed a waiver of the Tribe's sovereign immunity of a suit.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712-7424

White Mountain Apache Tribe  
Tribal Chairman  
P.O. Box 1150  
Whiteriver, AZ 85941  
FAX: (928) 338-1514

10. In accordance with Arizona Revised Statutes Section 11-952(D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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*[Signatures on next page]*

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**WHITE MOUNTAIN APACHE TRIBE**

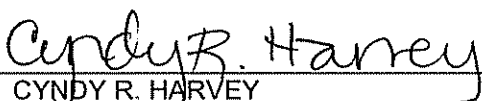
**STATE OF ARIZONA**

Department of Transportation

By   
DALLAS MASSEY, SR., CHAIRMAN  
Tribal Council

By   
MICHAEL P. MANTHEY, P.E.  
State Traffic Engineer

ATTEST

By   
CYNDY R. HARVEY  
Secretary of the Tribal Council

ATTORNEY APPROVAL OF THE WHITE MOUNTAIN APACHE NATION

I have reviewed the above-referenced Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the WHITE MOUNTAIN APACHE NATION, an Agreement among the State of Arizona and the Nation that has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the WHITE MOUNTAIN APACHE NATION under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 5 day of June, 2005.

A handwritten signature in black ink, appearing to read 'Anthony Lee', written over a horizontal line.

Anthony Lee A.B. Rikhu  
Nation Attorney



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TRANSPORTATION SECTION  
WRITER'S DIRECT NO: 602.542.8837

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1270-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 18 July 2005

Terry Goddard  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

James R. Redpath  
Assistant Attorney General  
Transportation Section

JRR:djd:780214